



September 13, 2004

Federal Trade Commission
CANSPAM Act
P.O. Box 1030
Merrifield, VA 22116-1030

RE: CAN-SPAM Act Rulemaking, Project No. R411008

Dear Commissioners:

On behalf of our 23,000 members across the United States, I am pleased to present the comments of the Association of Fundraising Professionals (AFP) regarding the Federal Trade Commission's (FTC) notice of proposed rulemaking and request for public comments regarding the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act").

AFP's comments focus on the applicability of the CAN-SPAM Act to nonprofit, tax-exempt organizations.

Organizational Background

For more than forty years, AFP has provided guidance and standards to those engaged in the philanthropic process. AFP's considerable expertise in the legislative field is based upon the combined experience of its 26,000 members in 172 chapters across North America and around the world.

AFP members are required annually to sign our Code of Ethical Principles and Standards of Professional Practice, which were first developed in 1964. AFP instituted a credentialing process in 1981 – the CFRE, Certified Fund Raising Executive designation to aid in identifying for the giving public fundraisers who possess the demonstrated knowledge and skills necessary to perform their duties in an effective, conscientious, ethical, and professional manner. We also have a strong ethics enforcement policy that can result in the revocation of credentials and expulsion of members who engage in prohibited behavior.

AFP Comments

AFP submitted comments to the FTC on April 10, 2004 regarding the Commission's notice of proposed rulemaking and request for public comments on the CAN-SPAM Act. AFP is pleased to see that the FTC's August 13, 2004 notice clarified many of the issues that were addressed in our comments.

AFP appreciates the FTC's acknowledgement that the Commission "does not have jurisdiction over entities that do not operate for their own profit or the profit of their members," as well as the exemption afforded AFP Members and others who send "transactional or relationship messages."

Although AFP questions whether the CAN-SPAM Act should give States and providers of Internet access service a right of action against nonprofit organizations, it is laudable that the FTC included a specific section for nonprofit entities in the notice that clearly recognized that nonprofit entities differ from commercial businesses.

There are vast differences between for-profit organizations and nonprofit organizations. Charities are not run for profit. Charities exist as partners between the government and the public to meet the needs of society, whether that need is related to health, education, the arts, social services, the environment, religion, or other matters. There is a manifest difference between a charity contacting a potential donor for a contribution and a for-profit company contacting a potential buyer of a product. In the latter case, the net revenue from a sale is kept as profit for corporate shareholders. In the former, the contribution is used for a charitable purpose, and there is a strong likelihood that the contribution will benefit the very community in which the donor resides.

Even more importantly, charities are not interchangeable. Consumers, intent upon product acquisition, will compare products, and generally seek the lowest price. While donors should insist upon capable management of nonprofit organizations, few are seeking a "bargain" when they consider whether and to which charities to make gifts. Some donors give to a health care facility because they are the proverbial grateful patient, others give to a charity because they are volunteers who have come to know and understand the economic requirements of the organization, still others want to add their support to achievement of an objective they know could never be realized unless many similarly interested parties banded together.

In addition, a basic purpose of the charitable sector is to improve and increase the level of communication about the betterment of society. Charitable organizations not only perform necessary work in support of societal needs, but they also fulfill a necessary function in educating the public about the nature of those needs. To make the performance of this educational role more difficult and expensive may mean that far fewer Americans will know of the financial demands of attending to poverty, pollution, disease research, preservation of cultural diversity, educational opportunities, and the myriad of other needs that exist in our society.

By noting that “only nonprofit entities’ messages whose strongest, most prominent content advertises or promotes a product or service . . . would be deemed to have a commercial primary purpose and therefore be covered by the Act,” the FTC acknowledged the differences between nonprofit organizations and commercial businesses and recognized the benefits that charities and charitable fundraising bring to society and that charities need access to donors and related information in order to meet the demands of their stakeholders.

Moreover, AFP is pleased that the FTC provides an exemption for charities. As AFP understands the exemption, a charity sending emails about commercial services to donors, volunteers or other individuals with past experience with the organization would probably be exempt from complying with the CAN-SPAM Act so long as the “transactional or relationship” aspect of the email was referenced at the beginning and no advertisements or promotions were included in any email subject lines.

AFP would again note that legitimate charities and the fundraising profession are committed to protecting the privacy and confidentiality of all donor transactions. As stated in AFP’s April 10, 2004 comments to the FTC, ethical fundraising is by its very nature donor-centered – the wishes and well being of the donor must come first above all else. Consequently, donor privacy is an issue of extreme priority for AFP and the entire charitable fundraising profession. AFP’s Code of Ethics (www.afpnet.org/ethics) reflects this considerable regard for privacy.

Given the existing safeguards for donor privacy, AFP strongly believes that it is unnecessary to implement burdensome and redundant regulations that would dramatically and unnecessarily hinder charities’ ability to raise critically needed funds.

AFP is grateful that the FTC recognizes that nonprofit organizations greatly differ from their for-profit counterparts and has provided the exemption.

Closing

AFP appreciates this opportunity to comment on the FTC proposals related to the CAN-SPAM Act.

AFP offers its resources and perspective if the FTC has additional questions or queries regarding these comments. Should you have any questions, please contact Walter Sczudlo, AFP General Counsel, at (703) 684-0410. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Paulette V. Maehara". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Paulette V. Maehara, CFRE, CAE
President & CEO
Association of Fundraising Professionals
1101 King Street, Ste. 700
Alexandria, VA 22314
(800) 666-3863
pmachara@afpnet.org
www.afpnet.org